IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.18779 OF 2024 (T-RES)

BETWEEN:

SRI. H. RAJEEVA SHETTY,
S/O LATE SRI GOVINDA SHETTY,
AGED ABOUT 53 YEARS,
A PROPRIETORSHIP CONCERN,
HAVING OFFICE AT "M/S MOOKAMBIKA CONSTRUCTION",
PRAKASH POOJARY BUILDING, FIRST FLOOR,
BEHIND KOYAKUTTI HALL,
NEAR BHANDARKARS COLLEGE,
KUNDAPURA TALUK,
UDUPI – 576 201.

…PETITIONER

(BY SMT. VANI H., ADVOCATE)

AND:

1. THE COMMERCIAL TAX OFFICER (AUDIT),
NEAR GOVERNMENT HIGH SCHOOL,
NEHRU MAIDANA, KUNDAPURA,
UDUPI – 576 201.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS), VANIJYA THERIGE BHAVANA,
2ND FLOOR, MAIDAN ROAD,
MANGALURU – 575 001.

3. THE STATE OF KARNATAKA,
DEPARTMENT OF FINANCE (GST WING),
REPRESENTED BY ITS SECRETARY,
VIDHANA SOUDHA, AMBEDKAR VEEDI,
BANGALORE – 560 001

4. THE MANAGER,
CORPORATION BANK,
GURUPRASAD, POST BOX NO.11,
MAIN ROAD, KUNDAPURA,
UDUPI – 576 201

5. THE MANAGER,
CANARA BANK,
POST BOX NO.10,
KAMATH BUILDING,
KUNDAPURA,
UDUPI – 576 201

6. THE MANAGER,
CANARA BANK,
NO.110, POST BOX NO.9,
A1, EAST COAST ROAD,
KUNDAPURA, UDUPI – 576 201

7. THE MANAGER,
KARNATAKA BANK LIMITED,
SRI LATHA MAHAL BUILDING,
POST BOX NO.15, MAIN ROAD,
KUNDAPURA, UDUPI – 576 201

8. THE MANAGER,
SRI RAMAKRISHNA CREDIT CO-OPERATIVE
SOCIETY LTD., BAN COMPLEX,
SHASHTRI CIRCLE, KUNDAPURA,
UDUPI – 576 201

9. THE MANAGER,
SAGAR CREDIT CO-OPERATIVE SOCIETY,
SAI CENTER MAIN ROAD,
KUNDAPURA,
UDUPI – 576 201

10. THE MANAGER,
CANARA BANK,
BHANDARKARS COLLEGE COMPLX,
VODERHOBLI, KUNDAPURA,
UDUPI – 576 201

11. THE MANAGER,
KUNDAPURA POST OFFICE,
KUNDAPURA,
UDUPI – 576 201

12. THE EXECUTIVE DIRECTOR (F AND A)
KARNATAKA STATE BEVERAGES CORPORATION LIMITED,
TTMC BUILDING, 4TH FLOOR,
A BLOCK, BMTC BUILDING,
K H ROAD, SHANTHINAGAR,
BENGALURU – 560 027

13. THE SPECIAL OFFICER,
HUBBALLI DHARWAD SMART CITY LIMITED,
F BLOCK, 4TH FLOOR, IT PARK,
OPPOSITE TO GLASS HOUSE,
HUBLI, DHARWAD – 580 020

…RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA FOR R1 TO R3;
R4 TO R10, R12, R13 ARE SERVED BUT UNREPRESENTED
SRI. B.S. VENKATANARAYANA, ADV. FOR R11)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ADJUDICATION ORDER BEARING NO.C.T.O(AUDIT)K/DRC-07/30/2023-24 DATED 29.11.2023 PASSED BY THE FIRST RESPONDENT VIDE ANNEXURE-A AND ETC.

THIS PETITION, COMING ON FOR *PRELIMINARY HEARING IN 'B' GROUP*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this writ petition, the petitioner seeks the following reliefs:

> *"(i) Issue a Writ of Certiorari or writ in the nature of certiorari to quash the adjudication order bearing No.C.T.OO(Audit)K/DRC-07/30/2023-24 dated 29.11.2023 passed by the first respondent vide Annexure-A.*

(ii) Issue a Writ of Certiorari or writ in the nature of certiorari to quash the impugned Endorsement bearing No.JC/APPL/MNG/GST/AP/2023-24 dated 27.05.2024 issued by the Joint Commissioner of Commercial Taxes (Appeal), Mangaluru, the second Respondent vide Annexure-B.

(iii) A Writ of Certiorari or writ in the nature of certiorari to quash the Garnishee Notice dated 01.04.2024 issued under Section 79(1)(c) of the Act by the first Respondent to Respondent No.4 vide Annexure-F.

(iv) A Writ of Certiorari or writ in the nature of certiorari to quash the Garnishee Notice dated 26.06.2024 issued under Section 79(1)(c) of the Act by the first Respondent to Respondent Nos.5 to 11 vide Annexure-F-1.

(v) A Writ of Certiorari or writ in the nature of certiorari to quash the Garnishee Notice dated 03.07.2024 issued under Section 79(1)(c) of the Act by the first Respondent to Respondent No.12 vide Annexure – F-2.

(vi) A Writ of Certiorari or writ in the nature of certiorari to quash the Garnishee Notice dated 03.07.2024 issued under Section 79(1)(c) of the Act by the first Respondent to Respondent No.13 vide Annexure – F-3.

(vii) Issue a writ of Mandamus or a direction in the nature of mandamus directing the first respondent to afford reasonable opportunity to petitioner to file reply to the show cause notice dated 23.08.2023 vide Annexure-D and consider the same in accordance with law and

(viii) To pass such other orders or directions as deemed fit by this Hon'ble Court in the interest of justice and equity."

2. Heard the learned counsel for the petitioner and the learned Additional Government Advocate for respondent Nos.1 to 3 and learned counsel for respondent No.11 and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner filed Form GSTR-3B for the month of April 2020 to March 2021. On 08.06.2023, the respondent issued an Intimation in Form GST DRC-01A calling for explanation with regard to the difference / discrepancy between Form GSTR-3B and Form GSTR-2A submitted by the petitioner. Pursuant to the same, the respondent issued show cause notice to the petitioner, who did not submit any reply to the same and consequently, the respondent proceeded to pass the impugned order at Annexure – A dated 29.11.2023, which is assailed in the present petition.

4. Learned counsel for the petitioner submits that due to *bona fide* reasons and unavoidable circumstances and sufficient cause, the petitioner could not submit his reply to the show cause notice and the impugned *ex-parte* order deserve to be quashed and the matter remitted back to the respondent for reconsideration afresh in accordance with law by providing an opportunity to the

petitioner to submit a reply to the show cause notice and thereafter, to pass appropriate orders. It is also submitted that the impugned order is vitiated on account of non-consideration of the Circular issued by the Central Government, Government of India, bearing No.183/15/2022-GST dated 27.12.2022 and hence, the impugned order deserves to be quashed.

5. Per contra, learned Additional Government Advocate for the respondents would support the impugned order and submits that there is no merit in the petition and that the same is liable to be dismissed, especially when the petitioner did not exercise his due diligence in participating in the impugned proceedings.

6. A perusal of the material on record including the impugned order will indicate that it is an undisputed fact that the petitioner did not respond / reply to the show cause notice and the impugned *ex-parte* order has been passed without hearing the petitioner. Under these circumstances, in view of the specific assertion on the part of the petitioner that his inability and omission to submit reply to the show cause notice and participate in the proceedings was due to *bona fide* reasons, unavoidable circumstances and sufficient cause, by adopting a justice oriented

approach and in order to provide one more opportunity to the petitioner, I deem it just and appropriate to set aside the impugned order and remit the matter back to the respondent for reconsideration afresh in accordance with law by issuing certain directions.

7. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned order passed by respondent No.1 at Annexure – A dated 29.11.2023; the impugned endorsement at Annexure – B dated 27.05.2024; impugned notices at Annexures – F, F1, F2 and F3 dated 01.04.2024, 26.06.2024, 03.07.2024 and 03.07.2024, are hereby set aside.

(iii) The matter is remitted back to the respondent for reconsideration afresh in accordance with law, bearing in mind the aforesaid Circular bearing No.183/15/2022-GST dated 27.12.2022.

(iv) The petitioner shall appear before the respondent on **28.04.2025**, on which date, he shall submit his reply to the show cause notice at Annexure – D dated 23.08.2023 along with relevant documents.

(v) Upon the petitioner submitting a reply along with relevant documents to the show cause notice, on 28.04.2025, the respondent shall afford a reasonable opportunity to the petitioner and hear him and proceed further in accordance with law.

(vi) It is made clear that if petitioner does not appear on 28.04.2025 and does not file objections along with the documents on that day, the present order shall stand automatically revoked without reference to the Bench.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SV
List No.: 1 Sl No.: 73